

RETURN TO:
BLUELINE ENGINEERING
724 1ST AVE N
BILLINGS MT 5101

DECLARATION OF UNIT OWNERSHIP FOR CHERRY ISLAND SUBDIVISION

CHERRY ISLAND, LLC., owner of lot described below, does hereby make and submit for filing the following Declaration under the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq. Montana Code Annotated. These units are, pursuant to 70-23-102(14) MCA.

1. DEFINITIONS.

In the interpretation of the Declaration and the Bylaws of CHERRY ISLAND SUBDIVISION Homeowners Association, the following definitions shall apply:

- (a) "Association" means the CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION, being all the unit owners acting as a group in accordance with the Declaration and duly adopted Bylaws. The Association is a Montana Non-Profit Corporation.
- (b) "Building" means each building comprising a part of CHERRY ISLAND SUBDIVISION project.
- (c) "Bylaws" means the Bylaws of the CHERRY ISLAND SUBDIVISION Homeowners Association.
- (d) "Capital Expenses" means the expense of capital improvements to common areas; "capital improvements" are improvements to the common areas not constructed by Developer.
- (e) "Common Elements" means the general common elements and the limited common elements.
- (t) "Declaration" means the Declaration of Unit Ownership for Cherry Island subdivision.
- (g) "Developer" is CHERRY ISLAND, LLC., or any person or entity to whom it transfers or assigns its development rights hereunder. A grant of a deed to a single completed unit by Developer shall not be deemed a transfer of development rights. If developer sells one or more units to a home builder for

the purpose of construction. the home builder shall obtain written approval of Developer for all building plans prior to commencement of construction.

- (h) "Eligible Mortgage Holder" means the holder of the first mortgage or trust indenture on any unit which has requested in writing that the Association notify it of any proposed action requiring the consent of a specified percentage of eligible mortgage holders.
- (i) "General Common Elements" means the general common elements specifically described in paragraph 9 below, and all other elements of Cherry Island subdivision project necessary or convenient to its existence, maintenance and safety or normally common use.
- G) "Limited Common Elements" means those common elements designed in this Declaration or by agreement of the units' owners as reserved for the use of fewer than all of the unit owners.
- (k) "Majority of the Unit Owners" means a majority of the votes of the unit owners.
- (l) "Unit" is defined in paragraph 4 of the Declaration.
- (m) "Unit Owners or Owner" means the person, partnership, LLC or corporation owning a unit, including a contract purchaser if a Notice of Purchaser's Interest is recorded with the Yellowstone County Clerk and Recorder, and including co-owners and designated representatives of any partnership, LLC or corporation, owning a unit. "Unit owner" shall also include Developer, until completion and occupancy of all units owned by Developer. A lessee of a unit shall not be considered a unit owner, unless as designated by the owner of record, following the procedures set forth in 70•23-102(17) MCA.

2. SUBMISSION TO UNIT OWNERSHIP.

The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to the duplex form of ownership and use provided by Chapter 23, Title 70, Montana Code Annotated, hereinafter referred to as the "Montana Unit Ownership Act". The definition of terms in this Declaration and the Bylaws of the Association shall be those definitions used in the Montana Unit Ownership Act, except as otherwise provided above. The real property included within the project, which shall be named "CHERRY ISLAND SUBDIVISION" is located in Yellowstone County, Montana, and is Cherry Island LLC The property is described as follows:

Lot 2, Block 1 Cherry Creek Estates Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. _____.

The provisions of this Declaration and the Bylaws of Cherry Island subdivision Homeowners Association shall be covenants running with the land and shall be binding on all owners, their

tenants and guests, for so long as the real property described herein is subject to the provisions of the Montana Unit Ownership Act.

3. DESCRIPTION OF PROJECT.

The project will consist of thirty-three (33) buildings with two (2) units in each building. Each building shall be of wood frame construction. Each building shall have a concrete foundation and will have an asphalt shingle roof. There will be decorative rock on the lower three to four feet of each building. Interior walls are of sheetrock. All duplexes will be one story with a crawl space and with an attached two car garage. The proposed location of each unit, and the unit number for each unit is shown on Exhibit "A" attached hereto. Exhibit "B" attached hereto, includes the floor plans which Developer presently intends to use. Subject to prior review and approval by the City County Planning Division, Developer reserves the right to modify or change the site plan shown in Exhibit "A", to change the floor plans shown on Exhibit "B", to use additional floor plans, to otherwise change the number and location of units and the common elements upon the real property described above, and to change the construction materials used in the units without consent of any other owner or any lender. Exhibit "C" attached hereto shows land area included in each unit.

4. DESCRIPTION OF UNIT.

Each unit consists of the area bounded by the exterior surfaces of the walls, the soil under the concrete slab, and the exterior surface of the roof, including the garage, and the common walls between the duplexes in the building to the center of the common wall separating two duplexes. The land beneath a duplex, and the land beneath the garage, private driveway, walkways, front porch or front entry, deck or patio serving only one duplex shall be part of the unit. The driveway, front entry, the air conditioning compressor, if any, the sidewalk and the mailbox serving only one duplex are also part of the unit. Utility lines and pipes which serve only one home shall be a part of the unit from the interior of the unit to the point where they are metered or join lines or pipes serving other units.

5. PLAN OF DEVELOPMENT.

The project may be developed in up to three phases. Developer may begin construction of phases in any order and may simultaneously construct buildings in more than one phase. Exhibit "A", attached hereto, is a site map showing all buildings and improvements which Developer now plans to construct on the property and showing the boundaries of each phase. Subject to prior review and approval by the City County Planning Division, Developer hereby reserves the right, in its sole discretion and without consent of any other owner or any lender, to change the number of units constructed, to divide a phase into two or more phases, to increase or decrease the number of buildings, and to change the design and location of the buildings and units to meet the requirements of the sales market.

Developer may proceed with such construction, without consent of the 'Association or the unit owners, subject to the following conditions:

- (a) Prior to conveyance or occupancy of each home, Developer's architect, engineer or surveyor shall execute and record an amendment to this

Declaration with the Yellowstone County Clerk and Recorder. The amendment shall include a floor plan for the newly constructed home, and a site plan showing the location of said home, if different from the plans attached to this Declaration, or shall identify the floor plan attached to this Declaration used for the new unit.

- (b) Upon completion of all buildings and other improvements, Developer or Developer's architect, engineer or surveyor shall record a notice of completion, together with a final as-built site plan for the project.
- (c) In the event of termination of the project prior to construction of 33 duplexes, Developer shall record an amendment to this Declaration, setting forth a reallocation of the percentage of undivided interest of each unit in the common elements. The interest of each unit shall equal one divided by the total number of duplexes constructed.
- (d) New buildings shall be similar in materials, style and quality to the existing buildings. However, subject to prior review and approval by the City County Planning Division, developer reserves the right to modify the design and mixture of buildings and floor plans to meet market requirements.

From and after the recording date of each of the above described amendments, the following consequences shall ensue:

- (e) The owners of each newly constructed home identified in the amendment shall have nonexclusive rights to use general common elements to the same extent as the owner of all the other completed homes.
- (f) The owners of each newly completed home shall be assessed in accordance with their ownership interest in the common elements. However, no new unit shall be assessed for, nor shall it have any obligation for debts or deficits in existence at the effective date of the unit's first occupancy.
- (g) Each home shall be treated as a part of the project developed as a whole from the beginning, except to the extent otherwise provided herein. From and after the date of the amendment, the new homes shall be treated as though they have been developed, held, occupied and used by the owners as part of a single, undivided project.

To facilitate construction and completion of the project, Developer hereby:

- (h) Reserves an easement over and upon common elements for the purpose of access for constructing additional homes and common elements.
- (i) Reserves solely to Developer the right to grant utility easements reasonably necessary to the ongoing development of the project, without approval of any unit owner.
- (l) Reserves the right to use water and electricity provided to the above described property or any home for construction purposes, provided that Developer shall reimburse the provider for the reasonable cost of such water and electricity.
- (k) Subject to prior review and approval by the City County Planning Division, reserves the right to amend this Declaration, without approval of any unit owner or any lender, to create additional general or limited common elements or change the location of general or limited common elements, to provide that the project has been terminated and no further homes will be constructed, to change the location on the lot of any building, to add a more complete

to supplement or modify those included herein, and to amend the percentage of interest in common elements attached to each home in accordance with the provisions of the Declaration. Each unit owner, and each holder of a mortgage or trust indenture on the home, by acceptance of a deed to the unit or by recordation of a mortgage trust indenture on the home, shall be deemed to consent to amendment of this Declaration by Developer in accordance with this plan of development.

Any liens arising as a result of Developers ownership of and construction of additional units shall not attach to the interests of other unit owners or those of first mortgagors of other units.

6. TERMINATION OF THE PROJECT

Developer may terminate its right to build additional buildings at any time prior to completion of all phases by recording a notice of termination with the Yellowstone County Clerk and Recorder. Upon termination, Developer may, at its option, elect to include the land on which a building has not been built as a general common element of the project, or alternatively, Developer may elect to remove the unbuilt land from the project (the excluded land), after subdividing the above-described real property. The notice of termination shall state which of these options has been elected by Developer.

If developer, upon termination, elects to designate the unbuilt portions of the above-described real property as general common elements of the project, upon recordation of the Notice of Termination, Developer's obligation to pay taxes and assessments on the land shall cease and terminate and Developer shall have no further obligation to make any improvements to any portion of the above-described real property. The notice of termination shall amend this Declaration to reallocate the undivided interest in the common elements in proportion to the undivided interest of completed units and shall include a conveyance of Developer's interest in the common elements from Developer to all existing unit owners. All unit owners, their lenders, mortgagees, successors and assigns, or anyone claiming by or through them, by accepting the recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to consent to inclusion of undeveloped land as a general common element of the project and to the above described conveyance of Developer's interest in the common elements.

If, upon termination, Developer elects to subdivide the above-described real property, the subdivision plat shall conform to local zoning requirements and restrictions. The real property and improvements included in the project shall include all completed units, the land beneath each unit and between units, the private streets serving the completed units, and the utilities and other common area improvements serving the completed units; if necessary, Developer shall grant to all unit owners easements across the excluded land for utilities and for use of the stormwater detention system. Developer shall have the right to grant easements on behalf of all unit owners, to benefit the land removed from the project, for use of new or existing utility lines and pipes, and the stormwater detention system, by the owners of the excluded property and for use of the existing roads which provide access to the excluded property. Easements for new utility lines, if any, shall cross the common elements only. The notice of termination shall amend this Declaration to reallocate the undivided interest in the common elements in accordance with the formula set forth in Section 7 below.

Any land excluded from the project shall no longer be subject to the provisions of this Declaration or the Bylaws of the Association and may thereafter be used for any lawful purpose.

Unit owners, their lenders, mortgagees, successors and assigns, or anyone claiming by or through them, by accepting and recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to consent to subdivision of the real property, to removal of unbuilt land from Cherry Island subdivision, to the granting and reserving of the easements described above, and to all conveyances needed to vest ownership of the included property in the existing unit owners and to vest ownership of the excluded property in Developer's name. Unit owners, their lenders, mortgagees, successors and assigns, or anyone claiming by or through them, by accepting and recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to grant unto Developer the power, pursuant to 70-15-301 MCA to take all actions necessary to accomplish such subdividing and conveyancing without further consent by any other owners or lenders. Any land removed from the project shall be owned by Developer free and clear of this Declaration.

7. OWNERSHIP

Each unit, an appurtenant undivided interest in the common elements, the use of limited common elements reserved for that unit, membership in Cherry Island subdivision Homeowners Association, and the assessment account for that unit shall be inseparable, and may be conveyed, devised or encumbered only as a whole. Any conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an individual unit owner's interest in the common elements shall be void unless the unit to which that interest is attached is also included in the transfer.

Each unit owner shall be a fee simple owner of such unit and of an undivided interest in the common elements, subject to provisions of this Declaration and the Bylaws of Cherry Island subdivision Homeowners Association.

During the construction of the project, the undivided interest in the common elements appurtenant to each unit shall be 1/33 each. If Developer records an amendment to this Declaration which indicates that more than or less than 33 homes will be built, this fraction will be adjusted to one divided by the total number of homes Developer intends to build in the project. Upon completion of construction of all units included in the project, the undivided interest in the common elements appurtenant to each unit shall equal one divided by the total number of homes in the project.

8. USE

The primary use for which each unit is intended is that of a residential dwelling. Additional restrictions on use are set forth in the Bylaws of the Association

9. COMMON ELEMENTS

- (a) General Common Elements. The general common elements include the private streets within the project, the landscaped and yard areas, sprinkler systems, wells and pumps that provide water for landscaping, handicapped parking spaces, if any, the storm water drainage system, the water and sewer lines, and utility lines, cables and pipes which serve more than one unit, the water meter vault, mailbox structure, if any, and all other elements of the project which serve more than one unit, excluding the limited common elements described below.
- (b) Limited Common Elements. The front yard area serving only that unit.

10. COMMON EXPENSES:

All of the following Association expenses shall be charged to the unit owners as a common expense, according to each unit owner's percentage of undivided interest in the common elements:

- (a) Administrative expenses of the Association, including management accounting and legal fees incurred by the Association.
- (b) The Association's costs of enforcing this Declaration and the bylaws and the rules and regulations of the Association to the extent such costs are not paid by the violating member, if any.
- (c) The cost of maintenance, repair and replacement of units and common elements for which the Association is responsible, including the cost of maintenance and repair of the exterior of the buildings, except glass and doors, including garage doors, and the cost of snow removal from driveways. Walkways, front sidewalks and sidewalks in the right of way adjoining this project, if any, when there is an accumulation of two inches or more, the cost of maintenance, repair and operation of the wells, pumps and sprinkler systems, the cost of maintenance and repair of the common water and sewer lines and the storm water drainage system, and the cost of watering, mowing and fertilizing all lawns, trees and shrubs and landscaping. The cost of maintenance and repair and snow removal for private roads providing access to the units when there is an accumulation of two inches or more, will be a common expense.
- (d) The cost of irrigation water and to all units and to the common elements.
- (e) The cost of maintenance of the storm water detention ponds, if any; the sub-surface boulder pits, the inlets, if any, and any other cost for keeping the storm water retention area in good repair and condition.
- (f) Insurance premiums for all insurance purchased by the Association, as required or authorized in the Bylaws of Cherry Island subdivision Homeowners Association.
- (g) Capital expenses for capital improvements approved by owners of 90% of the units, and the cost of maintenance and repairs to those improvements.
- (h) Income taxes payable by the Association, if any, and corporation fees payable to the Montana Secretary of State.
- (i) Any other expense designated as common in this Declaration or in the Bylaws of the Association.
- G) Common expenses approved by 75% of the unit owners entitled to vote.

Co-owners of a unit shall be jointly and severally liable for payment of common expenses for the unit owned.

Expenses for maintenance or repairs incurred due to the misuse or neglect of a unit owner or that of the owner's family members, tenants and guests, shall be payable by such unit or owner.

11. SEWER, WATER, GARBAGE AND STORM WATER DRAINAGE SYSTEM.

The Heights Water will read only one water meter for Cherry Island subdivision, and one bill for each water meter is sent to the unit owner. The City of Billings' fee for sewer and dumpsters and garbage removal is on the monthly bill received by the unit owner. The Association shall pay the irrigation water, sewer, and garbage bill each month, and the cost of these items provided to all of the units and the cost of water provided to the common areas, shall be a common expense and will be

collected in the same manner as a common expense. In the event of nonpayment, the Association shall have all of the remedies set forth in paragraph 14 below. Each owner, by acceptance of a deed to a unit, or by execution of this Declaration, contracts and agrees that the Association shall have a lien on that owner's unit for any unpaid bills for water, sewer and garbage provided to the unit; the lien may be foreclosed by the Association in the same manner as the lien for common expenses.

Blueline Engineering has prepared an Operation and Maintenance Manual for the Water, Sanitary Sewer and Storm Drain Systems serving Cherry Island subdivision and has also prepared a separate Stormwater Operation & Maintenance Manual for the Cherry Island Subdivision as required by the City of Billings; and the Association will maintain these systems in accordance with these Manuals and the expense of so doing will be a common expense. All owners, their tenants, employees and/or guests will comply with all procedures recommended in these Manuals which may from time to time be updated.

12. MEMBERSHIP IN THE CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION.

Each unit owner shall be a member of Cherry Island subdivision Homeowners Association. So long as Developer or a Builder to whom development rights have been transferred owns any unit, there shall be two classes of Membership, i.e., the Developer/Builder Members and Owner Members. Membership shall be appurtenant to and may not be separated from ownership of a unit. Owners shall be entitled to one vote for each unit owned. Developer and each Builder shall have one vote for each completed unoccupied unit and each uncompleted unit owned by it. When more than one person holds an interest in any unit, all such persons shall be members; the vote for such unit shall be exercised as owners determine, but in no event shall more than one vote be cast with respect to any unit.

13. COVENANT TO PAY MAINTENANCE ASSESSMENTS.

Assessments shall be made by the Association for all common expenses described in this Declaration, or the Bylaws of the Association. Assessments will begin at the time Developer closes the sale of the first unit in the project. Thereafter, the obligation to pay assessments for a unit shall start upon completion of the home. The Developer, for each completed unit owned by it, and each unit owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay Cherry Island subdivision Homeowners Association all periodic and special assessments made by the Association for common expenses and to waive any right said owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said assessments. Assessments shall not include costs attributable to homes under construction or to units on which home construction has not yet begun.

If a mortgagee, a beneficiary of a first trust indenture, or other purchaser obtains title to a unit by purchasing at a foreclosure sale on a first mortgage or first trust indenture, such acquirer of title and its successors and assigns, shall not be liable for the unit's unpaid regularly budgeted common expense assessments chargeable to such unit which became due prior to the foreclosure sale unless expressly assumed by them. The mortgagee, beneficiary of a first trust indenture, or other purchaser, shall be liable for any fees and costs incurred by the Association in attempting to collect unpaid assessments.

14. REMEDIES FOR NON-PAYMENT OF ASSESSMENTS.

All sums assessed by the Association but unpaid for the share of common expenses chargeable to any unit, and all other monies owed by a unit owner to the Association, together with interest, late payment fees, collection costs, costs of suit or arbitration, and reasonable attorney fees,

shall constitute a lien on such unit, and if filed of record, may be foreclosed in the same manner as a construction lien. During any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the rent.

Each assessment, together with interest at the rate of 10% per annum, late payment fees, collection costs or costs of suit or arbitration, and reasonable attorney fees, shall also be the personal obligation of the owner of the unit against which the assessment was made at the time the assessment fell due and a suit to recover a money judgment for unpaid assessments shall be maintainable by the Association against said owner without foreclosing or waiving the lien securing the same.

In addition to the foregoing remedies, the Association may also shut off the water to the unit of any owner who fails to pay an assessment within 15 days after the due date, and may continue to withhold water to the unit until such time as all assessments, together with accrued interest and cost of shutting off and turning on the water, if any, are paid by the owner. The Association shall not shut off the water to any unit unless, at least ten days before shutting off the water, it notifies the unit owner of its intent to shut off the water, by letter send certified mail to the most recent address provided by the owner to the Association.

The costs of collection of delinquent assessments, including but not limited to, court costs, costs of filing liens, and attorney fees, shall be the obligation of the non-paying unit owner, shall be deemed a common expense chargeable only to the non-paying unit owner, and may be added to the next regular assessment for that unit. Such costs shall be a lien on the unit of the non-paying owner and, if unpaid, the lien may be foreclosed in the same manner as alien for unpaid common expenses.

If a mortgagee, beneficiary of a trust indenture, or other purchaser of a unit obtains title to the unit as a result of foreclosure of a first mortgage of trust indenture, such acquirer of title, its successors and assigns shall not be liable for common expenses or assessments chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer unless expressly assumed by them. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including such acquirer, its successors and assigns. However, no sale or transfer of a unit shall relieve the acquirer from liability for assessments thereafter becoming due or from the lien thereof.

15. PROCESS.

Service of process in the cases provided for in Section 70-23-901, Montana Code Annotated, shall be made upon JOCK CLAUS., of 5855 ELYSIAN ROAD Billings, MT 59106. This provision may be amended in the manner provided in Section 70-23-902, MCA.

16. RIGHTS AND OBLIGATIONS OF DEVELOPER.

Until all units are built and sold, the Developer owning the unit shall pay the proportionate share of real property taxes attributable to units not yet built or built but not yet sold by it. Developer shall insure, to the extent it deems necessary, all units under construction, and pay the cost of such insurance.

For each completed unit owned by it, Developer shall have all of the rights and duties afforded to any owner under the terms of this Declaration, the Bylaws of Association, and Montana law.

17. EASEMENTS.

There shall exist for the benefit of each unit and as a burden on the other units the following easements:

- (a) Easement through the general common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of this Declaration. Each unit owner shall have an unrestricted right of ingress and egress across the common elements to his or her unit.
- (b) Easements through the common elements for maintenance, repair and replacement of the common elements. Use of these easements, however, for access to the interior of units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
- (c) Every portion of a unit which contributes to the structural support of a building shall be burdened with an easement of structural support for the benefit of the other unit in that building.
- (d) Easements through the units and common elements for all facilities for the furnishing of utility services within any building or to the common area, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring; provided that the easements for such facilities through a unit shall be only substantially in accordance with the plans of the building.
- (e) Easements for encroachments (and maintenance thereof) of any portion of the general common elements or limited common elements upon a unit or units so long as they stand, and easements for encroachments (and maintenance thereof) of any portion of a unit upon the general common elements, limited common elements, and upon an adjoining unit or units, so long as they stand.

Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements, or on the units for purposes of marketability of title.

18. GRANT OF EASEMENTS FOR SERVICES

The undersigned hereby grants an easement over and across the common elements and the driveways and sidewalks for mail service, solid waste services, fire service, police protection, other emergency vehicles and other publicly-owned vehicles being used for official federal, state, or local governmental purposes.

19. GRANT OF UTILITY EASEMENTS. The undersigned hereby grants unto Montana-Dakota Utilities, Co., to Northwestern Energy, to Quest, to Charter Communications and to all other providers of utilities, cable television and internet access, an easement across the above-described real property for the purpose of providing underground utilities, cable television and internet service to each unit, together with the right of ingress and egress for the purpose of installing, maintaining, repairing and replacing all necessary underground pipes, lines and cables. To the extent that they can conveniently do so, all grantees shall use the same trench for placement of pipes, lines and cables serving each of the units. This easement may not be used for providing utilities, cable television and internet service to any real property not described in Section 2 above.

20. UNITS SUBJECT TO DECLARATION, BYLAWS, RULES AND REGULATIONS AND RESTRICTIVE COVENANTS.

All present and future owners of units shall be subject to, and shall comply with the provisions of this Declaration, the Bylaws, and rules and regulations adopted by the Association, as

these instruments may be amended from time to time. The execution of a contract for deed by a unit owner or the acceptance of a deed thereto shall constitute acceptance of the provisions of such instruments by such owner. All owners shall be responsible for insuring compliance by their tenants, family members, other occupants of their unit and their guests. The provisions of the Declaration and the Bylaws, and rules and regulations adopted by the Association shall be covenants running with the land and shall bind any person having an interest in such unit as though the provisions were recited and fully stipulated in each deed or conveyance thereto. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of the Declaration. No provision in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

21. ARBITRATION AND RIGHTS OF ACTION.

The Association and any aggrieved unit owner shall have the right to binding arbitration and the right to maintain an action for specific performance to compel arbitration or enforce a decision of an arbitrator against any unit owner or the Association for failure to comply with the provisions of this Declaration, the Bylaws of the Association, or any rules and regulations adopted by the Association, except for claims of non-payment of assessments, fines or other monies owed the Association by any owner, and foreclosure of the lien for unpaid assessments, fines, or other monies OWED the Association, which claims shall be enforced by a Court action.

The prevailing party in any such action and in binding arbitration shall be entitled to recover its costs and attorney fees actually incurred from the losing party. In addition, the Association shall be entitled to recover from any owner violating the provisions of this Declaration, the Bylaws of the Association, or the rules and regulations duly adopted by the Association, including failure to pay assessments or other monies owed the Association when due, all costs and attorney fees incurred in compelling compliance or collection, without filing for arbitration or bringing a court action. Owners shall be responsible for non-compliance by their tenants, unless the tenant has been designated as the owner pursuant to 70-23106(17) MCA, and for non-compliance by members of the owner's or tenant's family or guests.

22. EMINENT DOMAIN

- (a) If a portion of the common elements only is acquired by eminent domain and if a separate award is not made to each unit owner, the award shall be allocated to each unit owner in proportion to each unit owner's percentage of undivided interest in the common elements.
- (b) If a part of the project which includes one or more individual units is acquired by eminent domain, the award shall be allocated to unit owners as follows:
 - (i) The owner of each individual unit taken shall receive the fair market value of his unit, including his interest in the common elements, whether or not any common elements are actually taken. Thereafter, the unit owner shall be divested of his entire property interest in the project attributable to the unit taken and shall have no further property interest in the property, including the common elements. Said common elements shall be reallocated to the remaining unit owners in proportion to each remaining owner's percentage of undivided interest in the common elements. In addition, the owner of each individual unit taken, following compensation, shall have no further voting rights in the project as owner of the unit taken.
 - (ii) The remainder of the award, if any, shall be divided among the remaining unit owners in proportion to each owner's percentage of undivided interest in the common elements.

- (c) If all of the project is acquired by eminent domain and a separate award is not made to each unit owner, each unit owner and any holders of mortgages or liens on the unit shall receive the fair market value of the unit, excluding its appurtenant interest in the common elements; the balance of the award, less any costs incurred by the Association in determining the fair market value of each unit, shall be divided among the unit owners in proportion to the unit's ownership interest in the common areas.
- (d) The directors of the Association shall represent the unit owners in any eminent domain negotiations, legal proceedings, settlements or agreements; each unit owner, by acceptance of a deed, irrevocably appoints the Association as that owner's attorney in fact for this purpose.
- (e) Payment of any award shall be made jointly to the owners of a unit and the lender(s) having a mortgage on the unit, if any.

23. PROTECTION OF LENDERS.

(a) **Eligible Mortgagee Protection.** Except as specifically provided in this Declaration or in the Montana Unit Ownership Act, no provision of this Declaration shall be construed to grant any owner or to any other person, any priority over any lien rights of an Eligible Mortgage Holder pursuant to its Security Interest in the case of distributions of insurance proceeds or condemnation awards.

(b) **Subordination.** Notwithstanding any contrary provision of this Declaration, the lien of any assessment for common expenses upon any unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of an Eligible Mortgage Holder; provided, however, that such subordination shall apply only to assessments on a unit which have become due and payable prior to a sale or transfer of such unit pursuant to a decree of foreclosure, and to any deed or other proceeding in lieu of foreclosure and any such sale or transfer in foreclosure or in lieu of foreclosure shall not relieve the purchaser of the unit from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

(b) **Notice of Actions.** Upon written request from a holder, insurer or guarantor of a first mortgage on any unit or an Eligible Mortgage Holder, the Association shall provide said holder, insurer, guarantor or each Eligible Mortgage Holder with timely written notice of:

- i. Any condemnation loss or any casualty loss which affects a material portion of the duplex project or any unit in which there is a security interest held by such holder, insurer, guarantor or Eligible Mortgage Holder.
- ii. Any Delinquency in the payment of common expense assessments owed by an owner whose unit is subject to a first security interest held by such holder, insurer, guarantor or Eligible Mortgage Holder, which remains uncured for a period of 90 days;
- iii. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- iv. Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders; and
- v. Any judgment rendered against the Association.

(c) **Inspection of Books.** The Association shall permit any Eligible Mortgage Holder to inspect the books and records of the Association during normal business hours upon three (3) days written request.

(d) **Financial Statements.** The Association shall provide any Eligible Mortgage Holder which submits a written request, with a copy of an annual financial statement within 90 days following the end of each fiscal year of the Association. Such financial statement may be audited by an independent certified public accountant if any Eligible Mortgage Holder requests it, in which case the Eligible Mortgage Holder requests it, in which case the Eligible Mortgage Holder shall bear the cost of the audit. The Association shall require that the cost of audit be paid in advance.

(e) **Enforcement.** The provisions of this article are for the benefit of Eligible Mortgage Holders and their successors, and may be enforced by any of them by any available means, at law, or in equity.

(f) **Attendance at Meetings.** Any representative of an Eligible Mortgage Holder may attend and address any meeting which an owner may attend.

24. AMENDMENT.

(a) Until sale of all of the units by Developer, or occupancy of all of the units, this Declaration, may be amended by Developer without consent of any other unit owner or any lender.

(b) After sale or occupancy of all of the units, this Declaration, except Section 15 may be amended by affirmative vote of 75% of the unit owners; if a unit has more than one owner, only one owner of that unit need consent. Amendments of a material adverse nature to Eligible Mortgage Holders must also be approved by Eligible Mortgage Holders that represent at least 51% of the votes of units that are subject to mortgages. Approval shall be assumed when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within sixty days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. No other Amendment need be approved by Eligible Mortgage Holders and no Amendment shall require the approval of any holder of a mortgage or trust indenture other than Eligible Mortgage Holders.

(c) All amendments to the Declaration shall be recorded in the office of the Yellowstone County Clerk and Recorder, Billing's, Montana, and no amendment will be effective until it is recorded.

25. CONFLICTS.

In the event of any conflict between this Declaration and the provisions of the bylaws of Cherry Island subdivision Homeowners Association, the provision of this Declaration shall govern and apply.

26. WARRANTY.

Developer gives no warranty, express or implied, on any of the units or common area improvements, but will transfer to the initial owners and the Association all manufacturers and dealers warranties receive from the general contractor on appliances, materials, fixtures and equipment, and any warranty given by the general contractors who constructed the buildings and common area improvements.

The Warranty from the general contractor will not cover cracks in the concrete foundation or floor, or in the concrete driveway or sidewalks, normal maintenance items or conditions resulting from wear and tear or misuse or negligence , including failure to provide reasonable and necessary maintenance, or any defect resulting from damage for which any third person is responsible. Contractor shall not be responsible for any damage to the home, including water damage or damage to the foundation , resulting from changes to the finished grade of the land by the homeowner, landscaping contractors, or any other third party, by altered rain gutter extenders, leaking underground sprinklers, or any landscaping which disrupts drainage away from the building. Contractor warranties may also have additional exclusions.

Return To:
BlueLine Engineering
724 1st Ave. N.
Billings, Montana 59101

**BY-LAWS
OF
CHERRY ISLAND SUBDIVISION
HOMEOWNERS ASSOCIATION**

Section 1. APPLICABILITY OF BYLAWS. The provisions of these Bylaws are applicable to Cherry Island subdivision which have been submitted to the provisions of the Montana Unit Ownership Act pursuant to the Declaration of Unit Ownership for Cherry Island subdivision. Cherry Island subdivision are located upon the following described real property located in Billings, Yellowstone County, Montana:

Lot 2, Block 1 Cherry Creek Estates Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. _____.

All present or future owners, tenants, or any other person who might use the facilities of the above-described property in any manner, are subject to the provisions of these Bylaws. The acquisition, rental, or occupancy of any of the units will signify that these Bylaws are accepted, ratified, and will be complied with.

Section 2. MEMBERSHIP, MEETINGS AND VOTING.

a) **Membership.** Each unit owner shall be a member of CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION, hereinafter called "the Association", a non-profit corporation. Until all units are sold and occupied, the Association will have two classes of membership. All unit owners, except Developer, shall be Class A Members; Developer shall be the only Class D Member. If the ownership of any unit is vested in more than one person, and while each such owner shall be a member, the co-owners or joint owners of the unit shall be deemed to be one member for the purpose of voting and the determination of any required quorum. Each unit owner shall be entitled to one vote and the vote for any unit owned by more than one person shall be exercised as such co-owners may among themselves determine. Until completion or termination of the project, Developer, or its successors or assigns, shall be deemed the owner of each unit not yet completed and each unit on which construction has not begun, and shall have one vote for each such unit.

b) **Ownership.** Ownership shall be determined according to the records of the Clerk and Recorder of Yellowstone County, Montana; except that a personal representative, conservator or trustee may vote in person or by proxy with respect to any unit owned or held by him or her in such capacity ,

THESE BYLAWS PROVIDE FOR BINDING ARBITRATION OF DISPUTES

whether or not the same shall have been transferred to his or her name by a duly recorded conveyance. Owners shall also include those purchasing units under purchase contracts who have an equitable interest in the unit as disclosed by the public record in the office of the Yellowstone County Clerk and Recorder, and in such an event the equitable owner shall be considered as the only owner of such unit. Tenants shall be deemed to be owners only if the record owner has complied with the provisions of § 72-23-102(17), MCA.

- 1) **Voting.** The owners of each unit shall be entitled to one vote per unit and the vote for any unit owned by more than one person shall be exercised as such co-owners may among themselves determine. Whenever a unit is owned by two or more persons, any one of such owners may vote, in the absence of protest by the others. Votes may be cast in person or by proxy.
- 2) **Proxies.** Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary on or before the appointed time of the meeting.
- 3) **Annual and Special Meetings.** The annual meeting of the Association shall be held on the second or third Saturday of August of every year on the day and time and place designated by the Board of Directors. Additional regular and special meetings of the Association may be held at such times and places as shall be agreed upon by the unit owners or by a majority of the Board of Directors. Notice of all meetings shall be given to each member personally or by mail, telephone, e-mail or facsimile at least ten (10) days prior to the day named for such meeting. Except as otherwise provided below, the Association shall have the responsibility of electing directors to administer the operation of Cherry Island subdivision.
- 4) **Agenda for Annual Meeting.** the agenda for the annual meeting shall include the following:
 - 5) 1) Determination of quorum.
 - 2) Approval of minutes of last meeting.
 - 3) Presentation of financial report for past year and budget for coming year.
 - 4) Report Board opinion of adequacy of limits on insurance coverage.
 - 5) Election of Directors.
 - 6) Appointment of Arbitrator, as provided below.
 - 7) Old business, if any; and
 - 8) New business.

Meetings shall be conducted in accordance with Roberts Rules of Order.

- 6) **Quorum.** Except as otherwise provided in these Bylaws, or in the Declaration, the presence, in person or by proxy, of Voting Members representing a majority of the total Owner Class A votes, and a majority of the total Developer Class D votes in the Association shall constitute a quorum at all Association meetings; and any action by the members shall require approval of a majority of the members present at the meeting.

- 7) **Arbitrator.** Until all units have been sold, the Developer shall appoint one person who is not a member to serve as Arbitrator for the Board and members. After all units are sold, at each annual meeting, the owners shall mutually agree upon and appoint one person who is not a member to serve as Arbitrator for the Board and members for the coming year. In the event of a dispute or disagreement between the directors or members which cannot otherwise be resolved without a lawsuit, except non-payment of assessments, the issue shall be presented to the Arbitrator and the decision of the Arbitrator shall be binding upon the Association, its members, and its Board of Directors. The Arbitrator shall be paid a reasonable amount for the arbitration services. If an Arbitrator is not selected by the members, one or more Arbitrators shall be appointed in the manner provided by the Montana Uniform Arbitration Act, or any successor to that Act. Claims of non-payment of assessments or other monies owed the Association and foreclosure of a lien for unpaid assessments or monies owed the Association are **NOT** subject to binding arbitration. Every unit owner by acceptance of a deed shall be deemed to consent and agree to arbitration of disputes, as provided in these Bylaws and in the Declaration of Unit Ownership for Cherry Island subdivision.
- 8) **Manner of Obtaining Approval of Unit Owners.** Approval of all decisions and resolutions of the Association which require the approval of unit owners may be obtained by vote at an annual or special meeting, or by written ballot or petition, circulated among the owners.

Section 3. BOARD OF DIRECTORS.

a) **Number of Directors.** The affairs of the Association shall be governed by a Board of Directors composed of three owners. Directors shall be elected by class vote so long as Developer owns any units. The Class A owners shall elect two of the Directors, and the Class D owner shall elect the third Director. After construction and sale of all units by Developer, the Class A owners shall elect all Directors, and the number of Directors may be increased upon affirmative vote of 75% of the members entitled to vote.

b) **Term of Office.** At the first annual meeting, the Owner Members shall elect two Directors for a one-year term. The Developer Member(s) shall elect one Director for a two-year term of office. Thereafter, the term of office of each Director shall be for two years.

c) **Nomination and Election.** Candidates for Directors shall be nominated from the floor at each annual meeting. Each unit owner in a class shall be entitled to one vote for each vacancy in the Board of Directors to be elected by that class; cumulative voting shall be permitted. The candidates receiving the greatest number of votes from the members entitled to vote shall serve as Directors for the following term.

If a quorum cannot be obtained for an annual meeting, the existing Directors shall continue to serve until the next annual or special meeting is held and new Directors are elected; or, as an alternative, the existing Directors may contact members to determine who is willing to serve as a Director and deliver a written ballot to all owners for voting. The ballot shall contain the names of all owners willing to serve for the term(s) to be filled.

d) **Qualifications of Directors.** Directors must be members of the Association, or, in the case of partnerships, LLCs, LLPs and corporate members, a designated representative of the corporate member, partnership, LLP or LLC.

e) **Compensation.** No compensation shall be paid to directors for their services as director(s) unless salaries for directors are approved by vote of one owner of each unit. However, directors shall be reimbursed for actual expenses incurred in the performance of their duties.

I) **Meetings.** Regular and special meetings of the Board of Directors may be held at such times and places as shall be determined by the Directors. Notice of such meetings shall be given by the Secretary to each Director and to the Treasurer and President of the Association, personally or by mail, telephone or facsimile, or e-mail at least three (3) days prior to the day named for such meeting. If notice is given by e-mail, the Association shall maintain a record of all e-mails sent. A majority of the Directors shall be needed for a quorum and any action by the Board shall require approval of a majority of the Directors present at the meeting. Directors may have telephone meetings, so long as all Directors are present, or given the opportunity to be present, and each Director is able to speak to and be heard by the others. Unless otherwise agreed by all Directors, meetings shall be conducted in accordance with Roberts Rules of Order. In any event, all Directors shall be given an opportunity to briefly speak without repeated interruptions, and formal votes shall be taken and recorded. Information concerning major actions by the Board shall be properly disseminated to all members of the Association in a manner to be determined by the Board. Owners may attend Board meetings but their participation in the meetings may be limited to the extent determined by the Directors present at the meeting.

g) **Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not prohibited by law, the Declaration, or these Bylaws directed to be exercised by the members. In addition, the Board of Directors shall have the following powers and duties:

- 1) To enforce the provisions of the Declaration of Unit Ownership and these Bylaws by appropriate action.
- 2) To determine the amount of any assessments payable by the unit owners for common expenses and to allocate and assess said expenses among unit owners in proportion to their respective interests in the common elements. Assessments shall include reasonable reserve funds. The Board shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Association.
- 3) In its discretion, to impose special assessments for major repairs or improvements and for emergencies, as they are incurred.
- 4) To send written notice of any change in the regular assessments and written notice of any special assessment to each unit owner at least thirty (30) days before its due date.
- 5) To record and foreclose a lien against any unit for unpaid assessments or to bring an action at law against the owner personally obligated to pay the same.
- 6) To adopt a schedule of late payment fees, with consent of 75% of the members entitled to vote.
- 7) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge

may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

- 8) With consent of a majority of the unit owners entitled to vote, to adopt a schedule of fines for violation of the Declaration, these Bylaws, or the duly adopted rules and regulations of the Association.
- 9) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
- 10) To procure and maintain insurance required or authorized to be purchased by the Association.
- 11) To pay all debts of the Association.
- 12) To grant and accept easements, permits and licenses on behalf of all unit owners, as necessary for the proper operation of the project.
- 13) To contract for repairs, maintenance, alterations, additions, and improvements which are the obligation of the Association.
- 14) Upon written request from any person, agency or corporation having an interest or prospective interest in a unit, to prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding tax year, at the requesting party's expense. The Board shall require that audit expenses be paid in advance of beginning the audit.
- 15) The Board shall review and approve or disapprove requests from unit owners for consent to modify, alter or add to the exterior of a unit, or any limited or general common element. In evaluating proposed additions or alterations, the Board shall consider the compatibility of external design, scale, color and type and quality of materials with existing structures, and the location relative to existing structures. The board shall also consider the cost of maintaining the addition or alteration, if that cost is to be borne by the Association, and any interference with the quiet enjoyment of the common area or adjoining units, by neighboring unit owners. Failure of the Board to approve or disapprove a request within 45 days after submission shall be deemed a disapproval by the Board. Except as otherwise specifically provided herein or in the Declaration of Unit Ownership for Cherry Island subdivision, no owner shall modify, alter or add to the exterior surface of a unit or any limited or general common element without prior written approval of the Board; provided, however, that Developer shall not be required to obtain approval of the Board for new units being constructed by Developer or other modifications or alterations made by the Developer. The Board of Directors may appoint an Architectural Review Committee to review, approve or disapprove such requests by unit owners.
- 16) To remove or replace any unapproved modifications or additions to the exterior of any unit, or to the limited or general common areas at the expense of the offending unit owner.
- 17) To file annual corporate reports with the Montana Secretary of State and to pay the required fee.

- 18) To prepare income-tax returns for the Association, if required by State or Federal law, and to pay all taxes owed.
- 19) To provide any notices required by these Bylaws or the Declaration of Unit Ownership for Cherry Island subdivision.
- 20) In its discretion, to delegate any of the above-mentioned powers and duties to one or more officers or employees of the Association, or to an independent contractor or agent.
- 21) To engage the services of a paid manager or managing agent. If the Board hires a professional management agent, the contract with that agent must permit termination of the contract by either party, without penalty, after 90-day advance notice of termination is given.
- 22) To supervise all officers, agents and employees of the Association, to ensure that they properly perform their duties.

h) Board of Directors as Trustee for Unit Owners. The Board of Directors is hereby irrevocably appointed as trustee for the unit owners of all of the units, and for each of them, to manage, control and deal with the interests of such unit owners in the common elements and the exterior of each duplex as necessary to permit the Board of Directors to fulfill all of its powers, rights, functions and duties.

The Board of Directors is hereby irrevocably appointed as Trustee for each unit owner, each mortgagee, other named insured(s), and their beneficiaries and any other holder of a lien or other interest in the homes or the property to:

- 1) insure the units and common areas, as provided in these Bylaws.
- 2) adjust and settle all claims arising under insurance policies purchased by the Board of Directors.
- 3) execute and deliver releases upon the payment of claims; and
- 4) act on their behalf in any condemnation proceeding or act of eminent domain.

The mortgagee and guarantor of the mortgage on any unit shall have the right to timely written notice of any condemnation or casualty loss that affects a material portion of the project or the unit securing its mortgage.

i) Resignation and Removal of Directors. Any director may be removed from office by the majority vote of the unit owners of the class electing the Director. In the event of resignation or removal of a Director, the vacancy shall be filled at a special meeting of the unit owners, or by written ballot circulated among the owners, in the manner provided for the election of directors, with the person so elected serving the balance of the unexpired term. Sale or transfer of the only unit owned by a Director shall be a resignation by the selling Director, if the Director no longer owns an interest in any unit.

Section 4. OFFICERS.

a) **Board Elects Officers.** The Board of Directors shall annually elect a President, a Secretary, and a Treasurer. The Board, in its discretion, may also elect a Vice-President. No two offices may be held by the same person except the offices of Secretary and Treasurer. The officers of the Association shall hold office at the pleasure of the Board and may be removed by the Board, with or without cause. In the event of a vacancy, the Board shall elect a successor at any regular meeting or at any special meeting called for such purpose. JOCK CLAUS shall serve as interim President and Secretary, respectively, until the first annual meeting of the Association.

b) **Qualifications of Officers.** Directors may also serve as officers but are not required to do so. Officers may be Directors or other members of the Association.

c) **Duties.** The President shall preside at all meetings of the Association and of the Board of Directors, shall supervise the affairs of the Association and its officers, shall have all of the powers and duties usually vested in the office of President and shall also perform such other duties as from time-to-time may be imposed by the Board of Directors. The Vice-President, if any, shall act in the place of the President and shall have such other duties as may be assigned by the Board of Directors. The Secretary shall keep all books and records of the Association and the Board of Directors and record all minutes of meetings of both, shall keep a record of all members of the Association, and shall serve all required notices. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate itemized accounts of all receipts and disbursements in books belonging to the Association, in chronological order. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time-to-time be designated by the Board of Directors. All checks over \$500.00 shall be signed by two officers.

d) **Compensation.** Any officer may be compensated, in a reasonable amount, as determined by the Board of Directors.

Section 5. LIABILITY OF OFFICERS AND DIRECTORS. The Officers and Directors of the Association shall not be liable to the Association or any unit owners for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct or bad faith. Except to the extent that such damages and expenses are satisfied by the Officers and Directors liability insurance, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that the person is or was an Officer or Director of the Association against damages and expenses, including attorney fees, judgments, fines and amounts paid in settlement incurred by the person in connection with such action, suit or proceeding if the Officer or Director acted in good faith and in a manner the Officer or Director reasonably believed to be in, or not opposed to, the best interests of the Association. If not satisfied by insurance proceeds, such damages and expenses shall be a common expense.

Section 6. INSPECTION OF RECORDS. The books, records and papers of the Association and a copy of the current Declaration of Unit Ownership, Bylaws, Articles of Incorporation and Rules and Regulations, if any, for Cherry Island subdivision, shall be open for inspection by any unit owner and by holders, insurers and guarantors of first mortgages on units, at any reasonable time, after reasonable notice to the Secretary.

Section 7. EMERGENCY ACCESS. Directors and their manager, if any, shall have the right to enter any unit in case of an emergency originating in or threatening such unit, whether or not the owner or occupant is present at the time.

Section 8. INSURANCE.

a) Except as otherwise provided in subsection **(k)** below, the Board of Directors shall insure all of the duplex units, the perimeter fence around the project installed by the Developer, if any, and all common element improvements, including every part of every building and all fixtures attached or affixed to any part of a building by screws, nails, glue, cement or other building material, against loss or damage by fire and other casualty in an amount representing the full insurable value thereof, less a deductible in an amount to be determined by the Board. Such insurance shall be "all-in" coverage. Works of art or purely decorative items normally not considered to be part of the real estate when a duplex unit is sold are not fixtures, even though temporarily attached to a wall with nails or screws.

b) The Board of Directors shall purchase public liability and property damage insurance, insuring the Association and unit owners for liability for personal injuries to, or the death of, any person, or damage to property resulting from the ownership, use or occupancy of the property, with policy limits to be determined by the Board, but no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) per aggregate.

c) The Board of Directors shall purchase fidelity insurance coverage for all persons handling Association monies, name the Association as insured, in an amount equal to the maximum funds held by the Association. If the Board employs a management agent, the agent must have its own fidelity insurance policy, providing the same coverage required above.

d) The Board shall purchase Officers and Directors liability insurance, covering each member of the Board and each Officer of the Association; the amount of coverage shall be determined by the Board. If the Association has employees, the Board shall purchase workers compensation insurance for the employees and shall purchase such other insurance as it deems advisable or as required by state or federal law.

e) The cost of all insurance purchased by the Association shall be a part of the common expense.

f) All insurance policies shall be issued by an "A" rated or better company approved by FNMA, if available; Directors shall seek to obtain the best insurance value, considering the coverage, the price, the financial stability of the insurer, and the history of the insurer in promptly and properly handling claims.

g) In the event of a loss exceeding One Thousand Dollars (\$1,000.00), all Association insurance proceeds shall be paid to the Board of Directors as trustee for disbursement.

h) Each policy shall contain a standard mortgagee clause in favor of each mortgagee or trust indenture beneficiary, or contract of sale endorsements in favor of the contract sellers of any units and shall require the insurer to notify the Association, each unit owner, and each first mortgage holder, in writing, of any lapse, cancellation or substantial change to the policy at least ten days prior to the date on which such cancellation or change takes effect. Duplicate originals of all new insurance policies and of all policy

renewals, together with proof of payment of premiums, shall be delivered to all mortgagees and contract sellers of units at least ten days prior to expiration of the then current policies.

i) The Board of Directors shall annually review the adequacy of limits of coverage of insurance policies, shall obtain an appraisal from an insurance company or other knowledgeable person or business of the full replacement value of the covered improvements, without deduction or depreciation, for the purpose of determining the amount of property insurance required under this section, and report its findings and opinion regarding insurance to the membership of the Association at its annual meeting.

j) Insurance policies shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured.

k) Unit owners shall not be prohibited from carrying other insurance for their own benefit provided that all policies shall contain waivers of subrogation and provided that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any unit owner. Insurance purchased by the Association shall not cover personal items, such as furniture or clothing inside the units. Owners must insure their personal property and obtain liability insurance to cover injury or damage occurring on or within their unit if they wish such insurance coverage. Owners should also consider obtaining loss assessment insurance. If any major improvements are made to the interior of a unit after initial purchase of the unit, (for example, if an owner later finishes an unfinished basement), those improvements (betterments) must be insured for fire and other casualty on the owner's personal insurance policy if the owner wishes to have insurance. Insurance on such betterments will not be purchased by the Association. Replacement of worn fixtures or equipment with similar new ones shall not be deemed a betterment. Owners must insure the fence enclosing their yard, if any, if they wish such insurance coverage.

l) Insurance payments for a fire or other property loss insured by the Association shall be applied by the trustee to repair or replacement of the damaged property. In the event the amount needed to repair or replace general common elements, is in excess of insurance payments, the amount needed shall be assessed to the unit owners as a common expense. If the amount needed to repair or replace limited common elements or a unit or units is in excess of insurance payments, the amount needed shall be paid by the owner of the unit or units or the owner using the limited common element. If insurance proceeds exceed the replacement cost of the property, excess proceeds shall be credited to the accounts of all unit owners. Property which is repaired or replaced after a loss shall conform in style, quality and appearance to the property as it existed prior to the loss.

m) The Association shall pay, as a common expense, the deductible amount for any property loss insured by the Association if the damage is only to the general common elements; provided, however, if the insured loss is due to the misuse, carelessness or negligence of a unit owner, the unit owner shall pay the amount of the insurance deductible. In all other cases, owners of the damaged units shall pay the deductible in proportion to the amount of the loss to each damaged unit reported on the insurance claim."

Section 9. PROPERTY LOSS. Property damaged by fire or other casualty must be repaired or rebuilt unless there is a total loss of all units, all unit owners agree not to rebuild, and there is agreement not to rebuild by mortgagees that represent at least fifty-one percent (51%) of the votes of the units that are subject to mortgages held by eligible mortgage holders. Insurance payments for a property loss insured by the Association shall be applied by the Board, or its designated Trustee, to repair or replacement of the damaged property, except in the event of a total loss of all units and a unanimous decision of all owners not

to rebuilt. Units which are repaired or replaced after casualty shall conform in style, quality and appearance to the unit as it existed prior to the casualty. In the event of a decision not to rebuild, the units and common elements must be sold. The net proceeds of sale and the insurance proceeds from the Association's policy, after deduction of the cost of cleanup, if any, shall be divided among the unit owners in proportion to each unit's undivided interest in the common elements. Checks shall be issued jointly to each owner and any holder of mortgages or liens on the owner's unit.

Section 10. ASSESSMENTS FOR COMMON EXPENSES.

a) **When Assessments Begin.** The owner of each completed unit shall be obligated to pay monthly and special assessments for common expenses imposed by the Association, beginning upon closing of the sale of the unit or a certificate of occupancy is issued for the unit, whichever occurs first.

b) **Amount.** Prior to the annual meeting, the Board of Directors shall prepare an Association budget for the coming year. A copy of that budget, together with a statement of the amount of each month assessment for the coming year, shall be delivered to each unit owner at least one week before the annual meeting. During construction, each monthly assessment for a unit shall be equal to the total estimated common expenses for the coming year, plus a reasonable reserve allowance for replacement of improvements, divided by twelve, divided by the total number of completed units. Upon completion of all units, each monthly assessment shall equal the total estimated common expenses for the coming year, plus a reasonable reserve allowance for replacement of improvements, divided by twelve, multiplied by the percent of undivided interest in the common elements for the assessed unit. Assessments shall be due and payable on the first day of each month. If an annual budget is not prepared as required, the monthly assessment due shall be equal to the amount of the monthly assessment for the previous year until changed by the Board of Director after preparation of a new budget. The regular monthly assessments may be changed by the Board at any time it determines that the changes is necessary or advisable. Written notice of the amount of any changed monthly assessment shall be given, by mail or otherwise, to each unit owner at least thirty (30) days in advance of the first payment due date for the assessment. Except for changes in the amount of the monthly assessments, no bills or other notices that monthly assessments are due need be given by the Association. Assessments must be based upon and computed by using the percentile interest that each unit owner has in the common elements.

c) **Record Keeping:** All assessments collected by the Association may be commingled in a single fund from which shall be paid the expenses for which the assessments are made. Separate records of payments received shall be kept for each unit.

d) **Interest and Late Fees.** Assessments paid more than ten (10) days after the date when due shall bear interest at the rate of ten percent (10.0%), per annum from the date when due until paid; in addition, late paying owners shall be obligated to pay a late fee if a schedule of late payment fees has been adopted by the Board of Directors. All payments upon assessments shall be applied first to late fees, then to interest and then to the earliest assessment due.

e) **Special Assessments.** Special assessments may be made by the Board of Directors for capital improvements only upon an affirmative vote of all of the members entitled to vote. The Board may impose special assessments for unanticipated emergency expenses without a vote of the members.

f) **Due Date.** Regular monthly assessments shall be due and payable, in advance, on the first day of each month. The Board shall establish the due date for special assessments. Fines imposed by the Board shall be due and payable 20 days after the Board notifies the unit owner of the fine.

g) **No Exemption from Payment.** No unit owner is exempt from payment of any common expense by waiver of the use or enjoyment of those items paid for or by abandonment of the unit.

h) **Account Balance Transfers with Unit.** No unit owner shall be entitled to receive the balance in that owner's assessment account upon sale of the owner's unit. The account balance shall pass with sale of the unit to the credit of the new unit owner. This provision shall not be deemed to prohibit a selling owner from collecting the balance of that owner's assessment account from a purchaser.

i) **Remedies for Failure to Pay.** The remedies for failure to pay assessments are set forth in the Declaration of Unit Ownership; those remedies are incorporated by reference into these Bylaws.

Section 11. MAINTENANCE OF UNITS AND COMMON ELEMENTS.

a) **Association Responsibilities.** The Association shall be responsible for any maintenance, repair, and replacement of common elements and for maintenance and repair of the exterior of the buildings, except replacement of glass and doors, including garage doors. The Association shall pay for maintenance, upkeep and repair of the interior streets, for watering and mowing lawns, for fertilization of lawns, trees and shrubs, and for snow removal from interior streets, driveways and front sidewalks when there are two inches or more accumulation of snow. The Association is responsible for the upkeep of the community mail boxes at each location. The Association shall replace lost mailbox keys and bill the member mailbox user. Maintenance of the sprinkler systems, the on-site stormwater facilities and the water meter vaults, the water mains, the well and pump, and the fire hydrant and valves located within the project, shall be the Association's responsibility. The Association shall also be responsible for maintenance of the sanitary sewer facilities for the project which serve two or more units, if the facilities are not maintained by the City of Billings.

The Association may employ personnel necessary for all required maintenance, upkeep and repair. The Association shall use a reasonably high standard of care in providing such maintenance, management and repair, so that the properties will reflect a high pride of ownership.

b) **Unit Owner Responsibilities.** Every unit owner shall be responsible for all maintenance of and repairs to the interior of that owner's unit, for prompt replacement of broken glass in the unit, and for prompt repairs to all doors, including garage doors. All utility lines and pipes, fixtures and equipment serving only one unit shall also be maintained, replaced and kept in repair by the unit owner. Owners shall be responsible for all damages to the other units or to the common elements resulting from the owner's failure to effect such maintenance and repair. Each unit owner shall be responsible for paying all taxes and assessments on his unit and for payment for all utilities provided to his unit.

All maintenance and repairs for which an owner is responsible shall be paid for by the owner. In the event an owner or tenant fails or refuses to provide adequate maintenance or repairs, the Association may, after ten day advance written notice to the owner, enter into the owner's unit and make the needed repairs or do the maintenance, and charge the actual cost of such repairs or maintenance to the unit owner. Any such costs shall be a lien on the unit on which repairs were made or maintenance was done, and if unpaid, may be foreclosed in the same manner as a lien for common expenses.

Each owner shall use a reasonably high standard of care in performing the maintenance set forth above, so that the entire project will reflect a high pride of ownership. The Board of Directors of the Association shall be the final authority in determining whether an owner is providing adequate maintenance and repair.

c) **Maintenance of On-Site Water, Stormwater, Sewer and Fire Facilities.** The Association is responsible for the maintenance for the irrigation water, sanitary sewer and storm drain systems serving the project; and the Association will maintain these systems in accordance with paragraph 11 of the Declaration of Unit Ownership for Cherry Island subdivision. The Association shall engage a certified operator to maintain the water and fire suppression system. The finished grade of the land in the project must not be changed after completion without prior review and approval of a civil engineer and, if required, by the Montana Department of Environmental Quality and/or by the City Engineer for the City of Billings. The Association shall use a reasonably high standard of care in providing such maintenance, management and repair.

d) **Fences.** A perimeter fence may be installed by Developer, and the Association shall be responsible for maintenance, repair or replacement of the perimeter fence, if any. An owner may install a fence only if approved by the Board of Directors or by an Architectural Review Committee in accordance with Section 12(f) below, and provided that it match or compliment the perimeter fence, if any, or other fences within the project. Approval of a fence may require installation of a gate or gates to facilitate yard mowing. The owner shall be responsible for the cost of installation, maintenance, repair or replacement of such a fence, excepting that the cost of installing, maintaining and replacing a fence dividing the yards of two adjoining units that are both fenced shall be split equally between the parties. Costs of maintenance, repair or replacement required by damage to fences caused by a unit owner or owners or their guests shall be paid for that unit owner or owners.

e) **20 Foot No Build Zone.** A 20-foot no build zone will be added across the west border of the Lot 2, Block 1, Cherry Creek Estates Subdivision. No fences, sheds, or permanent structures may be placed in this area. In addition, one tree per unit will be planted in this no build zone. The Association shall be responsible for the cost of installation, maintenance, repair or replacement of this area and trees. Costs of maintenance, repair or replacement required by damage to this area of trees caused by a unit owner or owners or their guests shall be paid for that unit owner or owners.

Section 12. RESTRICTIONS ON USE.

The following restrictions apply to use of all units and common areas:

a) **Types of Uses Allowed.** The property shall be used only for residential purposes except that an owner may use a portion of his unit for an office or studio so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant and provided the use complies with the applicable zoning ordinances of the City of Billings and applicable CC&R's for the subdivision in which the project is located. In addition, Developer shall have the right to maintain a construction office, a model home, and a sales office on the property until all homes are sold.

b) **Use of Common Elements.** The common elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited, and which are incidental to the use and occupancy of the units.

c) **Pets.** A maximum of one dog, and two cats shall be permitted in each unit only if kept under the owner's control at all times; however, the Board has the right in its sole discretion, to waive this pet restriction in extraordinary circumstances. No wolf hybrids or vicious breeds of dog, including but not limited to, Pitbull's, Rottweilers, Staffordshire's, Doberman Pinschers, German shepherds or Mastiffs shall be permitted in the project. No pets shall be allowed to run loose on the common areas. Owners shall be responsible for promptly cleaning up after their pets and for payment for any damage caused by their pets. Owners shall pay a fine, imposed by the Board, of \$50.00 for a second violation of any of the

pet restrictions and a fine of \$ 100.00 for each additional violation thereafter. In

addition, the Board may require an owner to either keep a pet inside or permanently remove it from Cherry Island subdivision project if the Board receives two bona fide complaints that the animal is a nuisance from one or more other owners within a six (6) month period.

No pet owner shall allow their animal to defecate on common areas, driveways, sidewalks or public streets without immediately removing the waste from the area and properly disposing of it. In no case, are pet owners to allow the waste to remain in common areas, driveways, sidewalks or public streets, thereby becoming a nuisance to others. The penalties set forth in the foregoing paragraph will be strictly enforced.

d) **No Livestock or Poultry.** No livestock or poultry may be kept or raised in any unit or on the common elements.

e) **Nuisances.** No nuisances or unlawful activities shall be allowed on or within any unit or the common areas, nor shall any use or practice be allowed which interferes with the peaceful possession or proper use of the property.

f) **Alterations to Buildings and Common Elements.** Nothing shall be done in, on, or to any unit or in, on or to the limited or general common elements which will impair the structural integrity of any building. No alterations may be made to the stormwater detention facility, berms or drains installed by Developer without the consent of the Department of Environmental Quality and/or the City of Billings. Except as otherwise provided herein, no unit owner or occupant, except Developer, shall erect or place on the limited or general common elements, any building or structure, including fences, walls, patios, decks and screen doors, nor add or remove landscaping, nor make any other additions or alterations to any common areas, or to the exterior of a home or unit, except in accordance with plans and specifications approved in writing by the Board of Directors or by an Architectural Review Committee if one is appointed by the Board of Directors. If plans and specifications have not been approved in writing within 45 days after submission, they shall be deemed disapproved. This restriction does not apply to Developer during construction of units and landscaping of common areas.

In evaluating proposed additions or alterations, the Board of Directors shall consider the harmony of external design, scale, height, color and type and quality of materials and harmony with existing structures, and the location relative to existing structures. The Board of Directors shall also consider the cost of maintaining the addition or alteration, if that cost is to be borne by the Association, and any interference with enjoyment of the common area or a neighboring unit by neighboring unit owners.

g) **Satellite Dishes and Antennas.** No TV antennas, or TV satellite dishes exceeding one meter in diameter or diagonal measurement, and no air-conditioning units, wiring or any other device shall be installed on the exterior of any building, in a yard, or on common elements without prior written approval by the Board. Owners may install a maximum of two small satellite dishes or antennas not exceeding one meter in diameter or diagonal measurement in the yard at the back or side of their duplex, or on the exterior surface of their home or garage, without prior approval of the Board of Directors. The location of the satellite dish must comply with the ordinances of the City of Billings. The Developer strongly recommends that satellite dishes not be installed on a roof. The owner of any unit having a satellite dish or antenna on the surface of the building shall be solely responsible for any damage to the building or to the interior of any unit resulting from placement of the dish or antenna on the building surface.

h) **Trampolines.** No trampolines are permitted, except inside a home.

i) **Garbage.** All garbage and trash must be placed in the proper receptacles designated for refuse collection, and no garbage or trash shall be placed elsewhere on any common element or outside any building; all trash containers, must be kept inside the garage except on collection days.

j) **Hot Tubs.** No outdoor hot tubs shall be permitted without prior written consent of the Board.

k) **Noise.** Residents and their guests shall exercise care about making noise which may disturb other residents. No unit owner shall operate or permit to be operated any sound producing device in a unit or on common elements between the hours of 11:00 p.m. and the following 7:00 a.m., if such noise shall disturb or annoy other residents or unit owners. Noise made by construction workers between the hours of 7:00 a.m. and 10:00 p.m. shall not be a violation of this restriction.

l) **Storage.** Toys, bicycles, tricycles, wading pools, tools, lumber, materials or equipment of any type must be stored inside the owner's home or garage when not in use and shall not be left unattended in front yards, driveways or on any common area used by more than one unit owner. A Unit owner shall not permit the accumulation of junk or debris on the land which is part of that owner's unit, or the common areas. Unit owners shall not leave any items unattended on grassy areas that will interfere with lawn mowing.

m) **Parking.** Unit owners shall not park vehicles in such a manner as to block sidewalks or driveways nor shall they permit any member of their family, guests or tenants to do so. No parking is permitted in any driveway approach or on common areas. Unit owners and their family members and tenants shall not park in designated visitor parking spaces. Junked or non-operational vehicles, boats and trailers, campers, 5th wheels and motor homes shall not be parked on common areas or in driveways for a period exceeding five consecutive days or 30 total days in any one calendar year. Improperly parked vehicles may be removed at the owner's expense.

No vehicle which does not have a visible handicapped permit or handicapped license plate may park in designated handicapped parking spaces. Vehicles violating this handicapped parking restriction may be towed at the vehicle owner's expense.

n) **Blocking Access.** Owners shall not permit any occupant or guest to take any action which impairs vehicle or pedestrian access to another unit.

o) **Fire Prevention.** No unit owner shall perform any act or store anything within or immediately adjacent to his unit which might increase the rate of fire insurance or increase the probability of fire as a result of such act or the storage of such items.

p) **Hazardous Substances.** No storage of chemicals or hazardous substances, except household cleaning products, shall be permitted in any unit, or in the common areas. No disposal of any hazardous substance shall be permitted anywhere within the Cherry Island subdivision project.

q) **Prohibited Activities.** No unlawful use shall be made of any unit, the common areas, or any part thereof.

r) **Fines.** In addition to the fines for pet violations set forth above, the Board of Directors is hereby authorized to adopt a schedule of fines for violation of any of the provisions contained in this

Section and for violation of any additional rules and regulations adopted by the Board pursuant to Section 13 below, and to assess such fines against all owners who violate these provisions.

The owner of each unit shall be responsible for fines resulting from the conduct of the occupants of the unit and their guests. In the event any owner, occupant, or guest of any occupant fails to abide by the provisions of this Section or the rules adopted pursuant to Section 13 below, the Board shall be entitled to recover from the unit owner all costs and attorney fees incurred by it in compelling compliance, with or without initiating arbitration or filing a lawsuit, including collection of fines imposed for violations. If an owner wishes to dispute the imposition of a fine against that owner, the owner must submit the dispute to the Arbitrator within six weeks after receipt of written notice of the fine; failure of an owner to submit the dispute to arbitration within six weeks shall be deemed an admission that the fine was properly imposed by the Board. All fines shall be a lien on the unit of the owner against whom they are imposed, and if unpaid, the lien may be foreclosed in the same manner as a lien for common expenses.

Section 13. RULES AND REGULATIONS. Administrative rules and regulations concerning the use of the common elements may be promulgated and amended by the Board of Directors with the approval of Seventy-Five percent (75%) of the members entitled to vote; provided, however, that no restrictions on the use of the common elements, in addition to those established in these Bylaws, shall be effective until such time as all units have been completed and sold or occupied, unless approved by the Developer.

A copy of the current rules and regulations shall be provided to each unit owner by the Secretary of the Association, without cost, upon receipt of a request therefor.

Section 14. WORKING CAPITAL. The Developer, as agent of the board of Directors, shall collect from the initial purchaser of each unit, at the time of closing, an initial capital payment equal to two months assessments for the unit. The Developer shall be entitled to retain the Buyers pro-rata share of insurance for the current premium period if Developer paid the premium for the unit sold for that period; otherwise the premium shall be paid to the Association's insurance agent. The remainder of each initial capital payment collected from the buyers shall be delivered to the Board of Directors to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, including insurance, initial maintenance, equipment, supplies, organizational costs, furnishings for common areas, and other startup costs and for such other purposes as the Board of Directors may determine. These funds may not be used by Developer to defray any of its expenses, constructions costs, or other financial obligations, and shall **not be** considered to be repayment of regular monthly assessments.

Section 15. LIABILITY OF THE ASSOCIATION AND UNIT OWNERS. The Association shall not be liable to any unit owner or any family member or tenant of any owner for any failure to provide services paid for as a common expense, or for any uninsured injury or damage to person or property caused by the elements, or resulting from water, snow or ice which may leak or flow from any portion of the common elements or from any pipe, drain, conduit, appliance or equipment onto a unit. The Association shall not be liable to any unit owner or any family member or tenant of any owner for uninsured loss or damage, by theft or otherwise, of articles which may be stored upon any of the common elements. This shall not be deemed to be a waiver of any liability between unit owners. No diminution or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements, or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any government authority. The Association shall not be liable to any unit owner or any family member or tenant of any owner for uninsured injury or damage to person or property caused by another unit owner. Any such liability shall be attributable solely to the

responsible unit owner. The Association shall not be liable to any unit owner or any family member or tenant for uninsured personal injuries or uninsured injuries to property occurring on common elements.

Section 16. AMENDMENTS.

a) Prior to completion of the project, these Bylaws may be amended by Developer, or its successors or assigns. Each owner, by acceptance of a deed to any unit, shall be deemed to consent to any such amendment by Developer, or its successors or assigns, and to have granted to Developer, or its successors or assigns, the power, pursuant to § 70-15-301, MCA, to make such amendments.

b) These Bylaws may be also amended by the Association in a duly-constituted meeting called for such purpose or by written petition, circulated among the owners; provided, however, that no amendment shall take effect without the approval of the Developer, or its successors or assigns, until such time as all units have been sold by the Developer or its successors or assigns. No such amendment shall take effect unless approved by at least seventy-five percent (75%) of the unit owners entitled to vote and until a copy of the Amendment, certified by the President and Secretary of the Association, is recorded in the office of the Clerk and Recorder of Yellowstone County, Montana; provided, however, that the Bylaws shall always include those particulars required to be included therein by the Montana Unit Ownership Act.

c) The consent of at least fifty-one percent (51%) of the eligible mortgage holders shall be required for a change in any of the following:

- i) Changes in insurance requirements; and
- ii) Changes in any provisions which expressly benefit mortgage holders, insurers or guarantors.

Section 17. BYLAWS ARE COVENANTS. The provisions of these Bylaws shall be covenants running with the land and shall be binding on all owners, their tenants and guests, for so long as the real property describe herein is subject to the provisions of the Montana Unit Ownership Act.

Section 18. CONFLICTS. In the event of any conflict between these Bylaws and the provisions of the Montana Unit Ownership Act or the Declaration of Unit Ownership of Cherry Island subdivision, the latter two shall govern and apply.

Section 19. ENFORCEMENT AND WAIVER. These Bylaws may be enforced in the manner set forth in the Declaration of Unit Ownership for Cherry Island subdivision and in these Bylaws. In the event the Board of Directors shall refuse or neglect to enforce the provisions of these Bylaws or the Declaration of Unit Ownership or duly-adopted Rules and Regulations, any unit owner shall have the right to do so.

Failure of the Association, its Board of Directors or any of its members to enforce the provisions of these Bylaws or the Declaration of Unit Ownership for Cherry Island subdivision or any Rules and Regulations adopted by the Association shall not be deemed a waiver of the right to do so in the future.

The losing party in any lawsuit or arbitration proceeding brought to enforce these Bylaws, or the Declaration, or to foreclose a lien described in the Declaration or these Bylaws, or to collect unpaid assessments for common expenses, shall be obligated to pay the reasonable attorney fees incurred by the prevailing party, together with costs incurred in the lawsuit or arbitration proceeding. In any lien foreclosure action against a unit, the owner of the unit shall be required to pay a reasonable rental for the unit, and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the

rent. In the event the services of any attorney are used by the Association or its Board of Directors to enforce these Bylaws, without filing a lawsuit or initiating arbitration, the party violating these Bylaws shall be obligated to pay the attorney fees incurred by the Association; the attorney fees shall be a lien on the unit of the violating owner. The lien may be enforced in the same manner as a lien for unpaid assessments for common expenses.

Section 20. DEFINITIONS. The terms used herein shall have the definitions set forth in the Declaration of Unit Ownership for Cherry Island subdivision.

Section 21. HEADINGS. The headings used in these Bylaws are for convenience only and shall not be deemed to limit the provisions of these Bylaws.

Section 22. NOTICE. Any written notice required or provided for in these Bylaws, or in the Declaration of Unit Ownership for Cherry Island subdivision shall be hand delivered or mailed by certified mail, return receipt requested, to the last address provided by the owner to the Association. A notice sent by certified mail shall be deemed delivered three (3) days after the date when mailed, whether or not actually received by the owner to whom it was sent.

IN WITNESS WHEREOF, the undersigned, being the owner of the property to which these Bylaws apply and being the interim President and Secretary of the Association, have executed this instrument as evidence of the adoption of the aforesaid Bylaws of the Association and hereby certify that the foregoing is a true and correct copy of the Bylaws of the Association.

DATED this _____ day of _____, 20__

CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION

Jock Claus

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this _____ day of _____ 20__, before me, the undersigned, a Notary Public for the State of Montana, personally **Jock Claus** known to me to be the President of **CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION**, whose names are subscribed to the foregoing Bylaws and acknowledged to me that they executed the same.

IN WITNESS WHERE, I have hereunto set my hand and affixed my Official Seal the date in this certificate first above written.

Notary Republic for the State of Montana